

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

HERBERT R. LEWIS, JR.,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-17-0544-F
)	
STATE OF OKLAHOMA, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Herbert R. Lewis, Jr., a state pre-trial detainee appearing pro se whose pleadings are liberally construed, has conditionally filed an action under 42 U.S.C. § 1983.

In Magistrate Judge Charles B. Goodwin's Report and Recommendation of July 27, 2017 (doc. no. 8, the Report), the magistrate judge recommends denial of plaintiff's application to proceed in forma pauperis (doc. no. 7), and recommends dismissal of this action without prejudice. The Report makes these recommendations based on the following conclusions.

1). With respect to the motion to proceed in forma pauperis, the Report finds that plaintiff provided incomplete financial information for the six-month period immediately preceding the filing of the complaint, and that plaintiff did not attach a certified copy of his account statement for the same six-month period.

2). The Report finds that plaintiff would not be entitled to in forma pauperis status even if he had provided complete financial information because plaintiff has three strikes and is therefore not entitled to proceed in forma pauperis absent a showing that he is in imminent danger of serious physical injury, a showing he has not made.

3). The Report finds that although a plaintiff who is denied leave to proceed in forma pauperis is ordinarily permitted twenty-one days to pay the required filing fee before the action is dismissed, the waiting period need not be observed here because even if plaintiff had paid the filing fee, he has failed to prosecute his case in accordance with the magistrate judge's orders and the procedural rules of the court. The Report notes that the magistrate judge had previously informed plaintiff that the one-paragraph complaint did not comply with federal and local procedural rules, and that an amended complaint curing specific defects must be filed or this action might be dismissed. The Report noted that although plaintiff had been given ample opportunity to do so, plaintiff had not submitted an amended complaint and that plaintiff had not explained why he could not do so within the time given for that purpose.

For these and other reasons set out more fully in the Report, the magistrate judge recommends that plaintiff's in forma pauperis application be denied under 28 U.S.C. § 1915(g), and that the complaint be dismissed without prejudice for failure to comply with the court's orders and procedural rules.

Plaintiff states several objections to the Report. Doc. no. 9. Construing these objections liberally, the court presumes that plaintiff intends to object to the Report in its entirety. Accordingly, the court has conducted a de novo review of the entire Report.

Plaintiff's objections argue that he has submitted the necessary financial papers on the approved forms. Plaintiff, however, still has not submitted all of the necessary financial information regarding the six-month period, and he still has not submitted a certified copy of his actual account statement (or the institutional equivalent) for the six-month period.


Plaintiff's objections also state that "Plaintiff has submitted in form that he is under imminent danger of serious physical injury." Doc. no. 9, p. 1 of 2. In that

regard, plaintiff attaches to his objections a “Request to Staff,” dated August 3, 2017, which includes the statement that “My life is in danger and imminent bodily harm can come to myself anytime....” Doc. no. 9-1. However, as explained in the Report, a plaintiff must make specific, credible allegations of imminent danger in order to satisfy the imminent danger exception of § 1915(g). Plaintiff has not done so, in his objections or otherwise.

Finally, plaintiff’s objections argue that he has submitted a short and plain statement of facts supporting a legal claim and that he has included a decipherable demand for relief sought, which is what the federal rules, and the local rules of this court, require. But plaintiff’s original complaint is deficient for the reasons previously identified by the magistrate judge, and plaintiff has not submitted an amended complaint which cures the deficiencies. Accordingly, the Report’s assessment that plaintiff has not complied with the magistrate judge’s orders or with procedural rules of the court, remains accurate.

The court has considered all of plaintiff’s objections, whether or not addressed in this order. Having done so, and having conducted a de novo review of the Report, plaintiff’s objections are **DENIED** (doc. no. 9) and the Report (doc. no. 8) is **ACCEPTED, ADOPTED** and **AFFIRMED**. As recommended in the Report, this action is **DISMISSED** without prejudice.

IT IS SO ORDERED this 15th day of August, 2017.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE